

Austin Independent School District

Pascal D. Forgione, Jr., Ph.D.
Superintendent



May 11, 2000

Via Overnight Mail

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: In the Matter of: Request for Review By the Austin Independent
Independent School District of the Universal Service Administrator's
Decision
Docket Nos. 97-21 and 96-45

Billed Entity No.	141739	
Application Nos.	142935	Internal Connections
	142908	Telecommunications

Dear Sir/Madam:

Enclosed please find an original copy of the Austin Independent School District's appeal from the Decision of the Universal Service Administrator. Please file same in accordance with the Commission's rules.

Please call if you have questions or require additional information.

Sincerely,

Pascal D. Forgione, Ph.D.
Superintendent

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of: Request for Review
By the Austin Independent
School District of Decision of the
Universal Service Administrator

Docket Nos. 97-21 and 96-45

APPEAL

The Austin Independent School District, a duly organized independent school district under the laws of the State of Texas located at 1111 West 6th Street, Austin, Texas 78703-5503, files its Request for Review of Decision of the Universal Service Administrator and shows as follows:

I. Statement of Interest

Austin Independent School District seeks the Commission's reversal of the Universal Service Administrator's Decision to deny funding for internal connections and telecommunications pursuant to its 1999-2000 E-rate applications. The denial of \$2,929,998.90 (discounted) sought in the 1999-2000 E-rate applications essentially deprives thousands of students the opportunity to access technology in furtherance of their education and frustrating the primary purpose of the School and Libraries Fund which is to support "the delivery of services into the classrooms or other places of instruction at schools and libraries that meet the statutory definition of an eligible institution." *SLD Policy Statement, Schools and Libraries Corporation Board of Directors, November 20, 1997.*

Austin ISD specifically appeals the Universal Service Administrator's denial of funding on:

Billed Entity No.	141739	
Form 471 Application Nos.	142935	Internal Connections
	142908	Telecommunications

The Universal Service Administrator's denial of funding on the above applications should be reversed because Austin Independent School District substantially or constructively complied with the School and Library rules or alternatively, that the 28 day posting rule should be waived in light of the special circumstances related to these applications.

II. Statement of Facts

On March 3, 1999, the Austin Independent School District filed its Form 470, Universal Service Control Number 516460000128505, with the Schools and Library Division. The online filing was completed pursuant to Tip 1, as noted in the Schools and Libraries Division website that states as follows:

Tip 1. File Your Form 470 Online — Using the online Form 470 for filing your E-rate application saves time and minimizes data entry errors. The SLD system validates the answers you data enter for each item, which means your application is less likely to need extensive problem resolution clean up. Form 470 applications that are successfully filed online also post faster to the SLD Web Site. You may access the online Form 470 by clicking the "Apply Online/View Forms" button at <http://www.sluniversalservice.org/>."

(Exhibit 1, Printed Version of Form 470, Filed Online)

The online filing was completed during the morning of March 3, 1999, by Ms. Leslie Cohen, an employee of the Austin Independent School District who has previously successfully secured funding from the School and Libraries Fund. (Exhibit 2, Affidavit of Ms. Leslie Cohen). Ms. Cohen believed that based on the tips listed on the School and Libraries Division website, Form 470 would be posted for possible bids on the same date, March 3, 1999. (Exhibit 2, Affidavit of Ms. Leslie Cohen). Based on her good faith reliance on the web site instructions, Ms. Cohen reasonably believed that the 28 day posting requirement would expire on March 31, 1999. (Exhibit 2, Affidavit of Leslie Cohen). Ms. Cohen is not aware of any notice in the School and Libraries Fund website or in any other material that state that online filings of Form 470 would not be posted on the same date. (Exhibit 2, Affidavit of Leslie Cohen). On the same date, Ms. Cohen mailed a signed copy of the application that was subsequently received by the School and Libraries Division on March 4, 1999. (Exhibit 3, Certified Mail Receipt). Ms. Cohen received notice from the School and Libraries Division that Form 470 had been received but mistakenly failed to notice the timelines set forth in the letter stating that the 28 days for completion of Form 471 fell on April 1, 1999 and not March 31, 1999 because the School and Libraries Fund did not post the application on its website until March 4, 1999 and not March 3, 1999 when it received the online filed Form 470. (Exhibit 2, Affidavit of Leslie Cohen). Based on her good faith reliance that the online filing would be posted on the same day, Ms. Cohen secured the signature of Mr. Curt Shaw on Form 471 on March 31, 1999. (Exhibit 4, Form 471). The SLD received Form 471 on April 5 (Exhibit 5, Domestic Return Receipt). Thus, Form 471 was actually posted an additional four days beyond the minimum required. At no time during the four-day extension of the posting did the school district receive any notice from vendors interested in bidding on any of the projects. (Exhibit 2, Affidavit of Leslie Cohen).

At all times relevant to this matter, the Austin Independent School District and IBM Corporation had entered into a contract since November 17, 1997 for construction services related to the school district's technological and infrastructure efforts. (Exhibit 6, IBM Contract and Extensions, Exhibit 2, Affidavit of Leslie Cohen). Although, the contract with IBM did not strictly meet the definition of a "an existing binding contract," (Form 470, Block 3, #10) because it was not entered before June 17, 1998, the IBM contract was a legally binding long term contract on the school district. (Exhibit 2, Affidavit of Leslie Cohen).

On November 2, 1999, Austin Independent School District received notice of the denial of its application for funds on Application No. 142935 based on the School and Libraries Division determination that the 28 day posting rule was not observed. (Exhibit 7). Similarly, on August 31, 1999, the Austin Independent School District received notice that funding on Application No. 142935 was also denied. (Exhibit 8). A timely letter of appeal was filed on Application No. 142935

on September 28, 1999. An appeal of the denial of Application No. 142908 was also timely filed by the Austin Independent School District on December 3, 1999. (Exhibits 9 and 10). On April 26, 1999, the Austin Independent School District received the Administrator's Decision on Appeal-Funding Year 1999-2000 addressing both applications in separate letters but on the same rationale—that the school district executed Form 471 one day before the 28 posting deadline had expired. (Exhibits 11 and 12). Telecommunications services are purchased from the State of Texas General Services Commission (Qualified Information System Vendors) price list, which is created through a bidding process. School districts are encouraged to use the QISV price list to obtain the lowest cost for telecommunications services. (Exhibit 2, affidavit by Leslie Cohen).

III.

Question Presented for Review

Whether Austin Independent School District reasonably relied on the information available to the district when submitting the application and thus effectively complied with the spirit of the 28 day posting rule or whether unique circumstances to these application exist to grant a waiver to the 28 day posting rule?

Compliance with the Spirit of the 28 Day Posting Rule and Substantial Compliance with the Letter of the 28 Day Posting Rule

A review of the facts related to Austin Independent School District's submission of its e-rate application for 1999-2000 clearly results in a determination that the school district complied with the spirit of the 28 day posting rule and substantially complied with the letter of the 28 day posting rule. Austin Independent School District respectfully requests that the Commission extend a full review of all facts in this matter given the significant impact that this decision will have on the school children in its charge. Austin Independent School District maintains that a thorough review of the facts and not just a cursory review of dates as apparently applied by the Universal Service Administrator will result in the determination that the E-rate applications in question should be fully funded.

As previously noted Austin Independent School District is a large urban school district in the State of Texas whose student population consists of over 51% students who qualify for a free or reduced lunch under federal law. The school district's mission to maximize student access to technology in the classroom is congruent with the mission of the School and Libraries Division. Similarly, as a political subdivision of the State of Texas, the Austin Independent School District is required to and committed to competitive bidding requirements to ensure that it acquires products and services at the lowest possible price and after allowing all interested vendors an equal opportunity to participate in the school district's programs.

In this context, the Austin Independent School District believes that its actions submitting an application to the Schools and Libraries Division complied with the spirit of the 28 day posting rule, and substantially complied with the letter of the rule. Additionally, as evident from the facts in this matter, there is no question that Austin Independent School District did not intentionally violate the 28 day posting rule and that, in fact, all its actions were calculated to comply with the 28 day posting rule.

Austin Independent School District has previously been determined by the School and

Libraries Division to be an eligible institution for participation in this program by virtue of the fact that the school district was awarded funding for the 1998-1999 school year. Austin Independent School District complied with all program requirements in the preparation, filing, and awarding of its technology related work to IBM Corporation in the 1998-1999 school year. The funding from the 1998-1999 application was successfully used by the school district to increase and improve access to computers by its students in the classroom. Based on the success of the 1998-1999 application, Austin Independent School District had a strong incentive to meet the School and Library Division's rules and requirements to secure future funding of technological improvements by applying for funds for the 1999-2000 school year.

To this end, Ms. Leslie Cohen, who prepared the application for funding in the 1998-1999 school year, prepared the application for the 1999-2000 applications by compiling the necessary data and reviewing the information on the Schools and Libraries Division website to make sure she had a proper understanding of the procedures for submitting an application for funding. It is during this process that Ms. Cohen determined that the filing of the school district's application or Form 470 could be expedited by submitting the application online. Ms. Cohen reasonably believed that once the application was electronically submitted on the morning of March 3, 2000, the School and Libraries Division would immediately post the application on its website. Although the web site invites applicants to file applications online, it does not contain any information that would inform an applicant that the application will not be posted upon receipt on the website. There is no question that Ms. Cohen's actions evidence her reasonable and diligent efforts to comply with the School and Libraries Division's rules in light of the information made available to her on that date. In the absence of notice that electronic filing of applications could not be expected to be filed on the same date, applicants should not be penalized by a denial of funding. Sanctions in the absence of notice are arbitrary and capricious and do not meet standard notions of fairness.

Ms. Cohen's actions after the electronically filing the application also shows that she was diligent in her efforts to meet the application requirements as published by the School and Libraries Division on its website. It is not disputed that Ms. Cohen secured the signature on Form 471 on the 28 day after her electronic filing of the application. Once again, Ms. Cohen's actions demonstrate her careful compliance with the spirit if not the letter of the 28 day posting rule. From her actions, it is clear that Ms. Cohen was cognizant of the 28 day posting rule and acted in a manner that met the express purpose of the rule by waiting 28 days from the electronic filing of the letter to allow all interested vendors an opportunity to bid on the applications. In any event, the record is clear that no vendor expressed any interest in Austin Independent School District's application because no bids on the application were received. Moreover, because Form 471 was not received by the Schools and Libraries Division until April 5, 1999, the online solicitation to bidders was published on the website for a full four days after the April 1, 1999 deadline prescribed by the School and Libraries Fund. Yet, despite the 32 day posting on the website there is no dispute that no vendors filed any bids or expressed any interest in the projects in question.

In summary, Austin Independent School District's actions in this matter show the absence of any motive to circumvent the rules published by the Schools and Libraries Division on its website. To the contrary, given the direct impact these federal funds have in improving educational opportunities for students, Austin Independent School District has strictly complied with application

requirements in 1998-1999 and attempted to strictly comply with these standards in the submission of its 1999-2000 applications. Austin Independent School District, however, accepts that its efforts to secure funding in the 1999-2000 application submissions were not perfect. Nonetheless, ample facts exist to show that the error made by Austin Independent School District in relying on its understanding of online application filing and its oversight in miscalculating the deadline for execution of Form 471 did not result in any harm to any vendor or interested person in the process. Instead, the clerical error that has raised doubt as to whether Austin Independent School District receives the federal funding in question will, if the Commission accepts the Decision of the Commissioner, serve to only harm those persons who were the intended beneficiary of these federal funds, the school children attending the Austin Independent School District. Such a decision cannot stand and should be reversed in recognition of the potential harm that could befall students by virtue of a clerical error.

Unique Circumstances Require A Waiver of the 28 Day Rule

In the alternative, Austin Independent School District contends that given the substantial interest it has to secure technological access and improvements for the benefits of its students and given the unique circumstances in this matter, the Commission should waive the 28 day posting rule and authorize the full funding of the applications in question.

As previously discussed, the Austin Independent School District's applications were posted on the web for a full 32 days and no vendor expressed an interest in the projects by filing a bid. Thus, the express purpose of the 28 day rule was met and no party with interest in the application was harmed.

In addition, the vague language on the website allows and/or leads persons to conclude that once an application is filed online, it becomes the responsibility of the Schools and Libraries Division to immediately post the application to commence the required 28 day posting. School and Libraries Division did not provide any instruction to applicants specifying how long after the online filing an applicant should wait before calculating the 28 days. To the extent, that the School and Libraries Division has internal procedures to post applications on the same date or failed to inform applicants of its internal posting schedule, it is not appropriate to penalize an applicant such as Austin Independent School District who has shown its good faith efforts to comply with all application requirements.

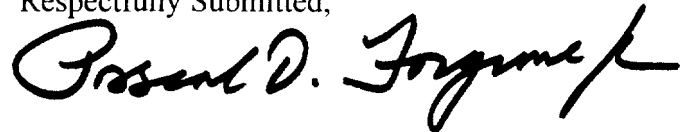
Further, in considering this matter, the Commission should carefully review the facts concerning Austin Independent School District's long term contract with the IBM Corporation to provide technological and construction related to the funds at issue. For reasons unknown the Austin Independent School District, the Schools and Libraries Division has narrowly construed existing contracts with approved vendors to those that were executed on or before June 17. Austin Independent School District entered into a contract with IBM Corporation on November 17, 1997, but had been negotiating with IBM Corporation since June 24, 1997. IBM Corporation has been approved by the State General Services and Purchasing Commission as a vendor who has agreed to work for governmental entities in the state at costs set after a competitive bidding process by the state. In addition, telecommunications rates are negotiated by the Texas State General Services Commission. School districts are encouraged to use these state rates specified on the state Qualified Information Systems Vendor list as these are the lowest rates arrived at through a competitive

bidding process. Thus, like the pre-existing IBM contract, there were existing contracts for telecommunications services that because of SLD rules, box 10 in Block 3 of Form 470 had to be checked, thus leading to a 28 day bidding process that was not needed. Consequently, Austin Independent School District met the objectives of the Schools and Libraries Division of bids secured through a broad competitive bidding process when it executed Form 471 on March 31, 1999.

Austin Independent School District understands the Schools and Libraries Division's need for enforcement of uniform rules to all applicants. Still, based on the significant negative impact that the narrow application of its rules may have on school children, Austin Independent School District contends that each and every appeal of an application denial is different and must be determined on a case by case basis considering the unique facts and circumstances of each appeal. In this manner, the Commission can ensure that it meets its primary goal to increase technological access to students and at the same time judiciously approve only meritorious appeals such as the appeal at bar.

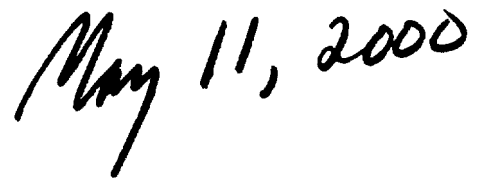
Based on the foregoing, the Austin Independent School District respectfully requests that the Decision of the Universal Service Administrator be reversed and that its 1999-2000 E-rate applications be fully funded.

Respectfully Submitted,

A handwritten signature in black ink, reading "Pascal D. Forgione" with a stylized flourish at the end.

Pascal D. Forgione, Ph.D.

Superintendent

A handwritten date in black ink, reading "May 11, 2000" in a cursive style.

REC'D - 110

MAY 12 2000

HOME | CANCEL | SAVE & EXIT | HELP

FCC FORM NO. 470

FCC Form

Approval by OMB
3060-0806

470

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 6.0 hours

This form is designed to help schools and libraries describe the eligible telecommunications-related services they see can be posted on a website and interested service providers can identify the applicant as a potential customer and com

Please read instructions before completing

(To be completed by entity that will negotiate with Providers.)

Block 1: Applicant Address and Identifications (School, Library, or Consortium desiring Universal Service Funding)			
1. Name of Applicant: AUSTIN INDEP SCHOOL DISTRICT		2. Funding Year: 07/01/1999 - 06/30/2000	
3a. NCES School Code (if Individual school) Or NCES Library Code (if individual library) State: 48 - District: 08940 - School/Library:			
3b. Universal Service Control Number: 516460000128505		3c. Applicant ID Number: 141739	
4a. Type Of Applicant (Check only one box.) <input type="checkbox"/> school <input type="checkbox"/> school district <input type="checkbox"/> library or library consortium under the LSTA <input type="checkbox"/> consortium of multiple entities			
4b. If Applicant is a consortium, check all other boxes that apply: <input type="checkbox"/> includes non-governmental entities ineligible for support <input type="checkbox"/> entity desires separate bills for each member of consortium <input type="checkbox"/> entity desires separate bills for some members of consortium <input type="checkbox"/> region of a state <input type="checkbox"/> statewide <input type="checkbox"/> multi-state			<input type="checkbox"/> state educational agency <input type="checkbox"/> local educational agency <input type="checkbox"/> educational service agency
5. Applicant's Street Address, P.O. Box, or Route Number			
Street 1111 W 6TH ST Suite C-200			
City AUSTIN		State TX	Zip Code 5Digit 78703 Zip Code 5399
Telephone number Ext: (512) 4144630		E-mail Address lcohen@tenet.edu	
6. Contact Person's Name: Leslie Cohen			
Street Address, P.O. Box, or Route Number (if different from Item 5)			

EXHIBIT
1

Street 1111 W 6TH ST Suite C-200			
City AUSTIN	State TX	Zip Code 5Digit 78703	Zip Code 5399

Fill in all of the following(if available), and check the preferred mode of contact:

Telephone Number Ext: (512) 41446:	Fax Number Ext: (512) 414478:	E-mail address: lcohen@tenet.edu
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Schools and Libraries Corporation, Inc.

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Please Record This USC Number For Future Reference:
This Number Must Be Used To Complete Your Application,
If You Leave This Process Before The Application Is Completed.

USCN: 516460000128505

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Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**Block 2: Other Characteristics Of Applicant**

7a. Number of students:

77,200

7b. Number of library patrons:

8. Number of buildings to be served:

709

9. Number of rooms to be served:

5390

Block 3: Summary Description of Needs or Services Requested10. Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s).
Block 4.

11. Check here if you have a Request for Proposal(RFP) available. If RFP is posted on a website, provide the web

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Schools and Libraries Universal Service
Description of Services Requested
and Certification Form

(1)	(2) Existing Services	(3) Additional Services Desired	(4) Total Services Desired
12 Telecommunications Services			
a. Number of phones that have or require service (See instructions concerning extension phones and fax machines.)	4053	5947	10000
b. Number of computers that have or require service	15350	14650	30000
c. Number of high bandwidth video conferencing links	0	109	109
d. Specify other (Optional)			
13 Internal Connections	Existing	Additional	Total
a. Number of buildings with at least some rooms connected	75	34	109
b. Number of rooms connected	350	4650	5000
c. Highest Speed of connection	10BaseT	ATM OC12	
d. Specify other (Optional)			
14 Internet Access	Existing	Additional	Total
a. Number of dial up connections necessary			
b. Highest speed of dial up connections			
c. Number of direct connections necessary	1	1	2
d. Highest speed of such direct connections	T1	ATM OC12	
e. Specify other (Optional)			

15. You may provide additional summary information about the services you are requesting to help service providers i more precisely. You may provide technical requirements or give an informal description of your telecommunications-r

16. Check here if there are any restrictions imposed by state or local laws or regulations on how and when provi you or on other bidding procedures. Please describe below any such restrictions or procedures. You may attach restrictio where they are posted.

The district uses the Qualified Information Systems Vendor (QISV) catalog system offered by the Council of	

17. Purchases in future years: If you have current plans to purchase additional services in future years, describe them this information is optional.)



470

Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**Block 4 Technology Assessment**

18. Although the following services and facilities are ineligible for support, they are usually necessary if schools and libraries are to make effective use of the eligible services requested in this application. (If your application is only for basic voice telephone service, check this box and go to Item 19. Otherwise, you must check at least one box in each of the other lines. You may provide details for purchases being sought.)

- a. Desktop communications software: Software required ☒ has been purchased; and/or ☒ is being sought.
- b. Electrical systems: ☒ adequate electrical capacity is in place or has already been arranged; and/or ☒ upgrade additional electrical capacity is being sought.
- c. Computers: a sufficient quantity of computers ☒ has been purchased; and/or ☒ is being sought.
- d. Computer hardware maintenance: adequate arrangements ☒ have been made; and/or ☐ are being sought.
- e. Staff development: ☒ all staff have had an appropriate level of training or additional training has already been provided; and/or ☒ training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services or facilities being sought.

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Schools and Libraries Universal Service
Description of Services Requested
and Certification Form

Eligible Entities

Billed Entity	Billed Entity's Zip code	Billed Entity code
AUSTIN INDEP SCHOOL DISTRICT	78703	141739



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Schools and Libraries Universal Service
Description of Services Requested
and Certification Form

ZIP Codes of recipients of service

Billed Entity: AUSTIN INDEP SCHOOL DISTRICT

78753	78702	78723	78757	78758
78704	78757	78758	78745	78723
78752	78704	78752	78745	78704
78753	78748	78702		

If a billed entity has more than one ZIP code, you can enter additional ZIP codes here. To remove an additional ZIP code, delete it from the above list.

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Schools and Libraries Universal Service
Description of Services Requested
and Certification Form

Ineligible Entities

Name of Entity	Contact Person	Contact Method	Contact Information
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Schools and Libraries Universal Service
Program Description of Services Requested
and Certification Form

I am sending in the list of individual billed entities (their zip codes and zip codes of their recipients of service) because I have more than 500 billed entities in Item 19, or in Item 20, or I have selected a state-wide check box in Item 19.

Yes ☒ No

For applicants who check "Yes", the list is necessary to complete the certification process.

USCN: 516460000128505

21. The applicant includes (Check one or both):

- a. ☒ schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 8801(14) and (25), that do not operate as for-profit businesses, and do not have endowments exceeding the value of \$100,000 and/or
- b. ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from and not limited to elementary and secondary schools, colleges and universities.

22. All of the individual schools, libraries, and library consortia listed above in item 19 are covered by:

- a. ☐ individual technology plans and/or
- b. ☒ higher-level technology plans for using the services requested in this application (if those services consist of one or more services).

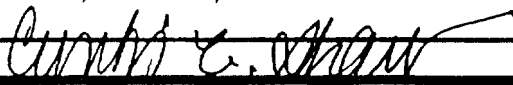
23. Status of technology plan (check one):

- a. ☒ Technology plan(s) has/have been approved; or
- b. ☐ Technology plan(s) will be approved by a state or other authorized body; or
- c. ☐ Technology plan(s) will be submitted to Schools and Libraries Division for approval.

24. ☒ I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used for the purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

25. ☒ I recognize that support under this program is conditional upon the school(s) or library(ies) I represent securing the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services effectively.

26. ☒ I certify that I am authorized to submit this request on behalf of the above-named applicant, that I have examined and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

27. Signature of authorized person		28. Date	3/3/99
29. Printed name of authorized person Curt Shaw			
30. Title or position of authorized person Executive Director			

USCN: 516460000128505

AUSTIN INDEP SCHOOL DISTRICT

1111 W 6TH ST Suite C-200

AUSTIN, TX 78703-5399

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act of 1934, 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

NOTICE TO INDIVIDUALS: Section 54.504 of the Federal Communication Commission's rules requires all schools and libraries order services and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Service Administrator, themselves or as part of a consortium. 47 C.F.R. § 54.504. The collection of information stems from the Commission's Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. The information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to the proceeding or has an interest in the proceeding.

If you owe a past due debt to the federal government, the taxpayer identification number (such as your social security number) and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other federal agencies and/or your employer, for salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the mail records when authorized.

With the exception of your social security number, if you do not provide the information we request on the form, the FCC may delay processing your application or may return your application without action.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974, 5 U.S.C. § 552, and the Paperwork Reduction Project, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Communications Commission, Performance Evaluation and Records Management, Washington, D.C. 20554.

This form should be submitted to:

SLD - Form 470
P.O. Box 7026
Lawrence, KS 66044-7026
1-888-203-8100

AFFIDAVIT OF LESLIE COHEN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

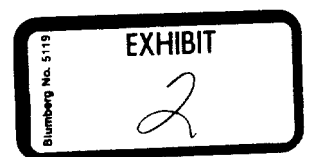
BEFORE ME, the undersigned authority, on this day personally appeared LESLIE COHEN, who being by me duly sworn, deposed as follows:

“My name is Leslie Cohen. I am over 18 years of age. I have never been convicted of a crime and I am personally competent to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and they are true and correct.

I have been employed by the Austin Independent School District for 25 years, and have succeeded in securing funding from the School and Libraries Fund in previous school years. On March 3, 1999, I completed the online filing of Form 470. When filling out Form 470, Block 3, neither #10 nor #11 described our situation. We intended to check item #10, as we had an existing, binding contract with IBM arrived at through a competitive bidding process, ending with a Letter of Intent signed on 6/24/97 entering into final, detailed negotiations. A formal contract for over \$25 million was signed on November 11, 1977. Thus we had a contract, but this did not meet the definition of the SLD.

Similarly, for telecommunications services, school districts are encouraged to use the Texas General Services Commission’s Qualified Information Systems Vendor List, created through a state-led competitive bidding process. Thus with telecommunications, as well, all our contracts were existing, but not according to the definitions of the SLD for item #10. We were advised by the SLD Help Line to check box 11 instead.

I reviewed the ‘tips’ posted on the School and Libraries Division website, and based upon

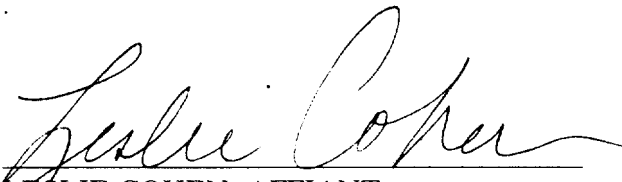


those 'tips.' believed that Form 470 would be posted for possible bids on the same date, *i.e.*, March 3, 1999. Based upon my good faith reliance on the website instructions, I reasonably believed that the 28-day posting requirement would expire on March 31, 1999. I did not review and am not aware of any notice in the School and Libraries Fund website or in any other material that states that online filings of Form 470 would not be posted on the same date. On the same date, I also mailed a signed copy of the application that was subsequently received by the School and Libraries Division on March 4, 1999. I received notice from the School and Libraries Division that Form 470 had been received, but mistakenly failed to notice the timelines set forth in the letter stating that the 28 days for completion of Form 471 fell on April 1, 1999, and not March 31, 1999, because the School and Libraries Fund did not post the application on its website until March 4, 1999 and not March 3, 1999 when it received the online filed Form 470. Based upon my good faith reliance that the online filing would be posted on the same day, I secured the signature of Mr. Curt Shaw on Form 471 on March 31, 1999. The SLD received Form 471 on April 5. Thus, Form 471 was actually posted an additional four days beyond the minimum required. At no time during the four-day extension of the posting did the school district receive any inquiries from vendors interested in bidding on any of the projects.

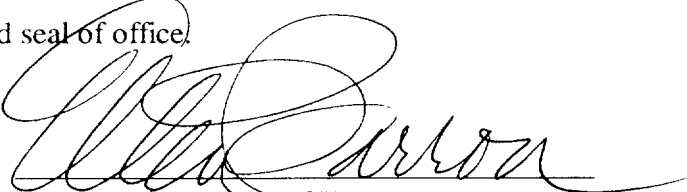
A Letter of Intent between IBM and AISD was signed on 6/24/97 commencing negotiations. On November 17, 1997, the Austin Independent School District and IBM Corporation entered into a formal contract for construction services related to the school district's technological and infrastructure efforts. Although, the contract with IBM did not strictly meet the definition of a "an existing binding contract," (Form 470, Block 3, #10) because it was not entered before June 17, 1998, the IBM contract was a legally binding long-term contract on the school district.

On November 2, 1999, Austin Independent School District received notice of the denial of its application for funds on Application No. 142908 based on the School and Libraries Division determination that the 28-day posting rule was not observed. Similarly, on August 31, 1999, the Austin Independent School District received notice that funding on Application No. 142935 was also denied. A timely letter of appeal was filed on Application No. 142935 on September 28, 1999. An appeal of the denial of Application No. 142908 was also timely filed by the Austin Independent School District on December 3, 1999. On April 26, 1999, the Austin Independent School District received the Administrator's Decision on Appeal-Funding Year 1999-2000 addressing both applications in separate letters but on the same rationale—that the school district executed Form 471 one day before the 28-day posting deadline had expired.

FURTHER, THE AFFIANT SAYETH NOT.


LESLIE COHEN, AFFIANT

SUBSCRIBED AND SWORN TO before me by the aforesaid Leslie Cohen on this 11th day of May, 2000, to certify which, witness my hand and seal of office.


Notary Public, State of Texas

